

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	X	
THE NEW YORK TIMES COMPANY,	:	
	:	
Plaintiff,	:	
	:	<u>COMPLAINT</u>
- against -	:	
DEPARTMENT OF HEALTH & HUMAN SERVICES,	:	:
	:	
Defendant.	:	
_____	X	

Plaintiff THE NEW YORK TIMES COMPANY, by its undersigned attorneys, alleges as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to obtain an order for the production of agency records from Defendant Department of Health & Human Services (“HHS”) in response to a request properly made by Plaintiff.
2. The FOIA request at issue in this action seeks information related to how the Indian Health Service (“IHS”)—a component of HHS—responded to warnings about Dr. Stanley Patrick Weber, a former IHS pediatrician convicted of sexually abusing Native American boys at a hospital on the Pine Ridge Indian Reservation.

PARTIES

3. Plaintiff The New York Times Company publishes *The New York Times* newspaper and www.nytimes.com. The New York Times Company is headquartered in this judicial district at 620 Eighth Avenue, New York, New York, 10018.

4. Defendant HHS is an agency of the federal government that has possession and control of the records that Plaintiff seeks.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

6. Venue is premised on Plaintiff's place of business and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

7. Defendant HHS has failed to meet the statutory deadline set by FOIA. See 5 U.S.C. § 552(a)(6)(A)-(B). Plaintiff is therefore deemed to have exhausted all administrative remedies, pursuant to 5 U.S.C. § 552(a)(6)(C).

FACTS

8. On February 24, 2020, The Times submitted a FOIA request to IHS seeking "[a]ny reports produced by Integritas Creative Solutions LLC investigators regarding Stanley Patrick Weber." The Times also sought expedited processing of the request.

9. On February 25, 2020, IHS acknowledged receipt of The Times's request and assigned it FOIA Case No. 20-063.

10. IHS has failed to respond to Plaintiff's FOIA request within the statutory time frame required under FOIA.

COUNT ONE

11. Plaintiff repeats, realleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

12. Defendant HHS is subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

13. HHS has failed to meet the statutory deadline set by FOIA. *See* 5 U.S.C. § 552(a)(6)(A)-(B). Accordingly, The Times is deemed to have exhausted its administrative remedies under FOIA.

14. HHS has no lawful basis for declining to release the records requested by The Times under FOIA.

15. Accordingly, The Times is entitled to an order compelling HHS to produce records responsive to its FOIA request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

16. Declare that the documents sought by its FOIA request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

17. Order HHS to provide the requested documents to Plaintiff within 20 business days of the Court's order;

18. Award Plaintiff the costs of this proceeding, including reasonable attorney's fees, as expressly permitted by FOIA; and

19. Grant Plaintiff such other and further relief as this Court deems just and proper.

Dated: New York, New York
April 16, 2020

/s/ David E. McCraw
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